

2/02 Exam MO Essay Examination Question 1 - Example 1

#1

Under Missouri law, Mary must give Frank at least 60 days notice of her intent to relocate Sam to Albuquerque. The notice has to be in writing. The notice should identify the proposed relocation. Identify the basis for the relocation, demonstrate the impact on Sam, and provide suggestions on how to maintain Sam's relationship with Frank. Frank has 30 days to respond to the notice. If Frank consents, Mary can take Sam to Albuquerque. If Frank does not respond to Mary, she can take Sam to Albuquerque at the end of the 60 day period. If Frank objects to the proposed relocation, Mary has to get a court order to take Sam out of the state.

#2

Frank has two options to block Mary. First, he can object to Mary's notice, and require the court to issue a ruling on the issue. Second, Frank can petition the court for a change of Sam's physical custody.

#3

The standard that the court will apply is the best interest of the child for both possibilities. However, with respect to changing actual custody, the court will also look to see whether there is a substantial and continuing change of circumstances with respect to the parents and child. In today's mobile society, the courts are hesitant to order changes of custody resulting from job changes, unless there is a substantial adverse effect on the child or there is evidence that the relocation is for the purpose of depriving the noncustodial parent of contact with the child.

In evaluating best interests of the child, the court will look at the following factors:

- 1) Parent's willingness to perform their parental roles;
- 2) Child's wishes;
- 3) Parents' wishes;
- 4) Child's adjustment to community, home and school;
- 5) Child's relationship with parents, siblings and other important people in the child's life;
- 6) Which parent is most likely to foster a continuing relationship with the other parent;
- 7) Age and mental condition of all those involved;
- 8) Benefits to the child of living with each parent; and
- 9) Other relevant factors.

#4

Mary will note for the court that the relocation is relate to her husband's transfer, and not some ulterior purpose. She will note that she has fostered Sam's relationship with Frank. She will note how she has encouraged Sam's musical talents. She will also point out the benefits of the Albuquerque music scene.

Frank will note his efforts to encourage Sam's love of sports and his active involvement therein. He will note that he has cooperated with Mary on parenting Sam. He will note that he has

scheduled his time off to coincide with Sam's summer vacation.

#5

If Frank does not consent, but does not file an action to block the relocation, the earliest Mary can take Sam out of state is 60 days after her initial notice.

#6

If Frank takes steps to block the relocation by filing with the court, Mary cannot take Sam out of state until the court has ruled on Sam's petitions. Of course, the court would have to rule in Mary's favor also.

2/02 Exam MO Essay Examination Question 1-Example 2

#1

For one parent to relocate a child, the parent (Mary) must do several things, the first of which is give Frank 60 days notice of her intention to relocate Sam before she actually relocates with Sam. She must also submit a new Parenting Plan to Frank and the court. If, 30 days after Frank is served with the notice, he consents to the relocation, then Mary can relocate Sam at the end of the 60 days. She needs to have notice and the Parenting Plan served on Frank by about June 20, 2001 (roughly 60 days before August 20, 2001).

#2

He could kidnap Sam, but more realistically he could file a motion with the court proposing to block the relocation, refusing to consent to the relocation.

#3

The test the court will apply is three-fold:

1. What are the best interests of the child;
2. Is the relocating parent acting in good faith (primary concern) and is the "blocking parent" refusing to consent in good faith;
3. Is there a new Parenting Plan on file?

#4

The main factors to stress are: the economic advantage to child; economic advantage to relocating parent; physical and emotional needs of child; and the chance for a relationship with the non-relocating parent. Therefore, Mary will stress: (1) that Bob's salary will be increasing, which will economically benefit Mary and Sam; (2) the award winning music program by the Albuquerque Symphony Orchestra; (3) possibly that Sam could see Frank more in the summer to make up for lack of time shared during the school year; (4) that she has filed a Parenting Plan (if she has).

Frank will bring up that: (1) Sam may not get to compete in sports near as much in New Mexico as here; (2) Frank won't get to see Sam nearly as often if he is moved to New Mexico; (3) while moving will help Sam with music, it may "stunt" his sports ability growth - of which, he has a promising career (football team); and if no new Parenting Plan is implemented, he would mention that.

#5

If Frank consents or if does not consent but takes no action on the matter, Mary may move Sam 60 days after notice is served on Frank.

#6

If the court allows relocation, any time after the court order. If the court refuses to allow the relocation, Mary may not relocate Sam.

2/02 Exam MO Essay Examination Question 1 - Example 3

#1

In order to move Sam to Albuquerque for the beginning of the year, Mary must give notice to Frank of her intention within the next 5 days (approximately). In order to relocate a child, the primary custodian must give notice to the other parent (if that parent has visitation or custodial rights) at least 60 days prior to the proposed relocation. If Mary wishes to be successful in the proposed relocation, she should also begin taking steps to maximize her possibility of success. For instance, if the Albuquerque Symphony Orchestra is a program for which Sam would have to gain admission, Mary should begin taking those steps to have Sam admitted. The written notice must be given to both Frank, and the Court having jurisdiction over the custody matter by way of the Parenting Plan. Mary will need to file a motion to amend the Parenting Plan.

#2

If Mary complies with the statutory 60-day written notice requirement, Frank may object to the proposed relocation by filing with the Court of Cole County within 30 days of receiving the notice. At this point, Frank could force the Cole County Court to adjudicate the propriety of the relocation and any proposed changes to the already accepted Parenting Plan. Additionally, if the Parenting Plan is temporary, Frank may move to make it permanent, thereby effectively denying Mary the ability to relocate with Sam (due to visitation requirements).

#3

The court will apply the “best interests of the child” test in resolving this dispute. The court will consider a variety of factors, including but not limited to:

1. Wishes of the child
2. Emotional and physical needs of the child
3. Connection the child has to his current community, school, etc.
4. Opportunities of the child under the proposed relocation
5. Custodial status of the parents
6. Ability for meaningful visitation of the non-custodial parent, and whether custody arrangements can be modified to allow meaningful visitation if the relocation occurs

#4

Mary will argue that the increase in Bob’s salary if they relocate will elevate Sam’s standard of living. She will also argue that as primary physical custodian she has a strong psychological bond with the child, and it would be in Sam’s best interest to allow him to move with her to Albuquerque. Mary will also argue that the Youth Symphony presents a very unique opportunity to advance Sam’s stated life goal of playing in a symphony orchestra. Finally she will also argue that Frank can have meaningful, effective visitation with Sam if the Parenting Plan is amended to allow visitation over longer portions of the summer, or even holidays.

Frank will argue that Sam has significant connections to Jefferson City through school and his participation on the football team. He can also argue that Sam has psychologically bonded with

him as a result of the rather frequent visitation. He can argue Sam's potential ability to be a starter on the high school football team. Finally, Frank can argue that he will effectively lose visitation rights if Mary takes Sam so far away.

#5

If Frank doesn't object, the earliest date that Mary can move Sam is 60 days after she gives the required statutory notice.

#6

The earliest date that Mary can relocate Sam is after the Cole County Court has adjudicated the relocation dispute in Mary's favor.

2/02 Exam MO Essay Examination Question 2 - Example 1

#1

The Boone County case was not timely filed. The statute of limitations for tort cases is 5 years. The cause of action accrues when damages are sustained - Oct. 22, 1998. The statute of limitations can be tolled for a number of reasons. Here, Plaintiff filed a voluntary dismissal without prejudice originally on Nov. 4, 1994. Doing so gives plaintiff one year in which to re-file. Therefore, Paul had until Nov. 4, 1995 to re-file the charges. Instead Paul continuously dismissed. This is not proper and does not extend the time in which he could re-file the petition. These dismissals appear to be in bad faith.

#2

Three methods of discovery that can be used are interrogatories, depositions, production of documents; physical examination (appropriate here because this is a personal injury case). Interrogatories are written questions served on parties asking basic, preliminary questions. They are good discovery devices that led to information on who is in charge; available records and documents, and the like. Depositions are questioning parties or witnesses live. The witness's attorney is present and can make certain limited objections. The deposing party can also file a subpoena duces tecum requiring the deponent to bring certain documents. Medical examinations can be ordered by the court if the physical condition of the party has been put in issue. This is appropriate in personal injury cases.

A summary judgment motion can be supported by affidavits, opponent admissions, and discovery so long as there is personal knowledge, the witness is competent and the facts are admissible at trial.

#3

The standard for determining whether summary judgment is warranted is: no genuine issue of material fact and the movant is entitled to relief as a matter of law.

#4

If the trial court denies the motion for summary judgment, it cannot be appealed because such a denial is not final. There is something left for the trial court to do. In order to be final, all the issues between the parties must be resolved. Here, the denial of summary judgment means the case will proceed to trial.

#5

You can seek a writ of prohibition or mandamus. Both are a form of extraordinary relief. Prohibition basically means that the judge lacks jurisdiction to do what he is about to do and should be stopped by the higher court. Mandamus means the judge is required to do something - he has no discretion - and should be ordered to do it. Neither prohibition nor mandamus will be granted here.

2/02 Exam MO Essay Examination Question 2 - Example 2

#1

It does not seem that the Boone county case is timely filed. Either the five year or two year statute of limitations applies to Paul's cause of action. [It sounds in tort. I would need to do some research to discover which sol truly applies.] Assuming that the five year sol applies (the catch-all sol for tort actions that do not have a stated sol) his case was timely filed in St. Louis County. But Paul's voluntary dismissal filed in Nov. of 1994 operated to dismiss the case. A party may voluntarily dismiss their case at any time prior to the introduction of evidence at trial. Court approval is not required for such a dismissal. So, regardless of the communication re: the trial date from the clerk's office, Paul's case was dismissed by his filing in 1994. Even assuming that he was protected by the one-year savings statute, he filed his case in Boone County more than one year after his St. Louis Co. case was dismissed. There seem to be no facts that indicate there was a tolling of the statute for any other reason (e.g. the defendant was absent from the state when the cause of action accrued, or Paul was disabled at that time.).

#2

I could use interrogatories, requests for admission and depositions.

Interrogatories are written questions re: the case that are sent to the other party. The party typically must respond to these questions within 30 days; must do so with good faith and after an investigation (for answers that the party is unsure of). If the party believes a question is improper, she must clearly object to the question.

Requests for admission are requests for the admission of the genuineness of documents or the truthfulness of material facts that are sent to the other party. Usually, if they are not answered within 30 days, they are deemed admitted.

Depositions (typically) are oral examinations of either parties or non-parties, taken under oath and usually recorded by a court reporter.

#3

The court determines whether there are genuine issues of material fact in the case and that the moving party is entitled to judgment as a matter of law. (The standard is no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.)

#4

No, I cannot appeal the denial. Such a denial is not a final judgment that can be appealed from. It does not finally decide the rights and liabilities of the parties.

#5

I could seek to have the denial termed an interlocutory order and seek appeal. I could also apply for an extraordinary remedial writ. I would need to show irreparable harm [e.g., rights being infringed, harassment] and just cause before I could obtain the writ. I would need to do further research regarding any other remedies and relief I could seek from the court of appeals.

2/02 Exam MO Essay Examination Question 2 - Example 3

#1

Voluntary dismissal is effective the day it is filed. In this case, that date was November 4, 1994. The subsequent errors by the clerk's office do not change that. A court order is not necessary to make the voluntary dismissal effective, and does not change the date of dismissal.

A party who has voluntarily dismissed (a suit which was timely filed within the statute of limitations) without prejudice may refile within one year of the dismissal date. The fact that the statute of limitations expired after the filing of the original suit and before the suit is re-filed, does not bar the subsequent suit. Provided that it is re-filed within the one year period. The one year period in this case expired on November 4, 1995. Since the case was not re-filed until March 22, 1996, the subsequent suit is barred by the statute of limitations.

#2

Three discovery methods which you can use to prepare your summary judgment motion are:

1. Requests for Admission - wherein you ask a party to admit or deny certain facts or applications of law to fact. You can even ask the party to admit or deny the ultimate issue in the case.
2. Interrogatories - wherein you ask a party to answer written questions, the answers to which disclose facts and reasoning.
3. Depositions - Depositions can be conducted on written questions or orally. They are not limited to parties.

#3

The standard for granting summary judgment is that there is no genuine issue of material fact about which there could be reasonable disagreement, and hence judgment is appropriate as a matter of law. All reasonable inferences are to be drawn in favor of the respondent. Also, the respondent cannot rest on mere allegations, but must come forward with affidavits and other admissible evidence which support his claims.

#4

Generally, only final orders which dispose of all claims as to all parties, and which dispose of all pending motions are appealable. A summary judgment order is not a final order and you would have to wait for the conclusion of the case. However, you can take an interlocutory appeal if the trial court makes an express determination that the order disposes of at least one claim as to one party and an express determination that there is not just reason to delay the appeal.

In this case, you could not appeal, absent the express determinations by the trial court which would allow you to make an interlocutory appeal.

#5

You could also ask the court of appeals for a Writ of Prohibition, to prevent the trial court from acting in a way which is inconsistent with the requirements of law. You must show the court of appeals that the trial court has exceeded its authority. That can be done in a situation such as this where the statute of limitations clearly bars the suit from proceeding.

Writ of Mandamus (?)

2/02 Exam MO Essay Examination Question 3 - Example 1

#1

Appeals Court will review the decision of the Comm. & Board if the decision was valid, final and based on substantial evidence.

#2

Appeals Court will treat the actions with deference and only reverse for an abuse of discretion.

#3

The Court of Appeals might refuse to affirm the decision if the agency acted in an abuse of their discretion or if they failed to observe the proper requirements at the hearing with regard to procedure. Because this is a governmental action specific to Dr. Bad as an individual and his license is a property right, due process considerations will be balanced to support his rights to procedures.

Therefore, if the decision was:

1. made without observing the formalities of procedure as to evidence, testimony, presentation;
2. made in abuse of discretion not supported by the evidence
3. made without substantial evidence in that it was too weak to rely upon,
4. due process considerations of notice violated
5. or if Dr. Bob was not granted the discovery of the evidence it relied upon.

#4

Dr. Bad could argue that the journal is hearsay evidence and speculative of medical conditions by a lay person or that, since this is a contested case, he was not given proper notice in discovery of its contents. He could also argue that the journal is privileged but this will fail in that the condition is at issue at the hearing.

#5

Hearsay Testimony

The action against Dr. Bad is a contested case in that it is adjudicative in nature and a hearing is required by statute.

At the administrative hearing, the rules of evidence are somewhat more relaxed than in a criminal or civil trial. The hearing requires that a party be entitled to examine and cross examine witnesses and to present evidence.

Hearsay may be considered here on these grounds if the proffered testimony is reasonably calculated to apprise the agency of testimony relevant to the hearing or if it is offered and the opposing counsel does not object.

Here, Dr. Bad did not object to the admission and offering of the journal, he did not preserve the objection for appeal by objecting, therefore the hearsay is admissible.

#6

The Court of Appeals to a contested case is limited to the record of the agency and will afford

deference to the agencies determination if based on substantial evidence and they did not abuse their discretion. Here if the opposed finding was based on substantial evidence, the Appeals Court will not reverse.

In this case, great weight was given to the journal and to the depositions of med. personnel. On these facts, this constituted substantial evidence such to preclude the Appeals Court from interfering.

2/02 Exam MO Essay Examination Question 3 - Example 2

#1

Under Missouri law, the ct. of appeals makes a de novo review of the legal decisions of the Commission and Board. The questions presented are legal, not factual.

#2

The ct. gives deference to factual conclusions reached by the Commission and Bd. when related to their areas of expertise. Questions of law are reviewed de novo. Factual conclusions must be supported by evidence on the record in a contested case.

#3

The decision by the bd. to revoke Dr.'s license was not made by an impartial arbiter, but by the bd., which had also acted as a prosecutor. This violates due process and MAPA rules, which both require decisions in contested cases or adjudications to be made by an independent person. Dr. doesn't seem to have had an opportunity to present evidence at the Bd's Oct. 2001 hearing. In a contested case, a party has a right to put on relevant evidence. The Commission's finding, which goes to whether there is cause to discipline Dr., does not resolve the question of what the appropriate discipline should be. Dr. has a right under MAPA and a due process right to put on a defense in all phases of the disciplinary process. The evidence supporting the decision may not be weighty enough to support the decision; there is only hearsay evidence and testimony presented by subsequent treating physicians, physicians who would be competent to testify as to facts as witnesses but who shouldn't be used to establish standard of care.

#4

The evidence might be construed hearsay.

#5

Hearsay evidence can be considered when the decision maker decides that the testimony is credible and not otherwise prejudicial. The rules of evidence in administrative cases are not as strict as in ct. cases, and the agency can consider any evidence it considers credible.

#6

The ct. of appeals must defer to the administrative agency's decision if the decision is supported by competent and substantial evidence.

2/02 Exam MO Essay Examination Question 3 - Example 3

#1

The trial court reviews decisions of the Commission if Dr. Bad has exhausted all of his administrative remedies. The exception would be if there would be undue delay or if it would be futile to continue with the administrative remedies.

Here, the trial reviewed Dr. Bad's case without a trial so the Appellate court would be appropriate.

#2

The appellate court gives deference to the Commission and the Board. For matters/questions of law, Missouri courts review matters on the record (formal contested cases as here) using a substantial evidence test. If there is substantial evidence to support the decision, the Board and Commission's decision will be upheld.

For matters of fact, the Missouri courts will review de novo and substitute their own judgment.

#3

- a. If there was bias by the administrative law judge or one making the final decision
 - b. If the Dr. did not get adequate due process since a liberty right was in question
 - c. If the Doctor was denied the ability to cross examine witnesses and have a full/fair hearing
 - d. If the Board/Commission abused its discretion in making determinations of law, fact or policy or any hearing decision
 - e. Abuse of discretion relative to admission of items of discovery;
- a decision by the Board and Commission that was not explained nor supported by the evidence.

#4

The administrative hearings in Missouri follow most of the procedural guidelines that the Missouri courts follow.

The journal kept by Mrs. Patient Heart may be considered hearsay and therefore not admitted.

#5

Missouri administrative agencies follow most of the procedural guidelines of the Missouri courts, including the admission/denial of hearsay testimony.

The administrative agency may admit hearsay evidence when it will help the administrative agency adequately review all of the evidence and not violate the claimant's due process rights.

#6

The Court of Appeals treats evidentiary matters as matters of law and uses the substantial evidence - sufficient support of evidence standard.

The court will give deference to the administrative agency so long as there was not an abuse of discretion.

2/02 Exam MO Essay Examination Question 4 - Example 1

#1

Remedies in equity are only available if: (1) there is no adequate remedy at law, (2) enforcement is feasible, and (3) defenses do not bar the action. In this case, since it is predominately a trade secrets/trade name case, courts will generally permit equitable remedies if all elements are otherwise satisfied.

1. Injunction: Ron should seek an injunction against Hope to stop her from using her knowledge of his customer lists, product information, and similar trade name. An injunction will be available if no adequate remedy at law will prevent the harm seeking to be enjoined, if the balance of harms favors the Petitioner, and if it is fair.

In this case, Ron will argue that his product information (Formula), though not a patented was not available to the public and that he kept it in a safe. He will argue that the customer lists were not publicly available and that they were treated confidentially. Hope's using both the formula and the confidential customer lists should be enjoined because there is no other remedy available that would protect his interests/trade secrets.

Ron will argue that Hope should be enjoined from use of the name "Canned Rug" because it will confuse customers and will result in harm to his business - - especially since it is essentially the same product. Generally he will argue that the harm to him is much greater than that potentially caused to Hope because, since she misappropriated his trade secrets, she is not entitled to use them. These same facts also support a finding of fairness.

2. Specific Performance: Where a valid contract exists, enforcement is feasible and fair, and the promises therein are mutual, the court may order specific performance.

Where a non-compete covenant is at issue, a court will normally enforce them if they are not unconscionable. In this case, Ron will argue that the non-compete was reasonable in time and in scope and will seek specific performance against Hope.

Injunction will likely succeed as to use of customer lists and formulas but not to trade name (see Free Speech discussion below).

Specific Performance - will probably succeed because non-compete appears reasonable. The time element may be too long, but a Missouri court would likely blue pencil it to shorten it to a more reasonable time, e.g. 2 or 3 years.

Hope's Defenses:

As discussed above, Hope will argue that the injunction against use of trade name violates her right to free speech. Normally a person is permitted to advertise and name products as they desire so long as not fraudulent. In this case, Ron did seek trade name protection, therefore Hope will argue that free speech allows her to name her product.

She will argue that the customer lists were not trade secrets. Normally information that a former employee takes away in his/her head is not protected. She will argue that she is permitted to contact former customers because she did not misappropriate any property.

She will argue that the formula was not a secret because it was not patented.

She will argue that the non-compete was not reasonable in time or geographic scope and is, therefore unconscionable.

Hope will also argue that enforcement of the equitable remedies is not feasible. Where a court does not have jurisdiction over a party equitable remedies normally fail due to infeasibility. Since Hope now lives in Iowa, she will argue that enforcement is not feasible due to lack of jurisdiction.

However, since Hope lived in Missouri, entered into the contract in Missouri, jurisdiction probably exists.

Hope will also argue that an adequate remedy at law is available. She will argue that money damages or royalties could be awarded thus removing the court's jurisdiction in equity.

She will argue unclean hands with respect to the non-compete contract. Ron told her that he would not enforce it when they entered into it. She would argue that this "fraud in the inducement" results in Ron having unclean hands which means that he committed some misconduct in connection to the transaction for which equitable relief is sought. This is particularly true since she objected to the provision. She will argue that Ron should therefore be estopped from asserting the non-compete provision.

Furthermore, she will argue that since Ron failed to pay bonuses provided for that the contract is unenforceable because Ron breached its terms. Such an argument could be an "unclean hands" argument or could be "failure of mutual remedies." For specific performance to be proper, the obligations of a contract must be enforceable against both parties. The party seeking enforcement must have fully performed. Here, Ron has not fully performed, therefore no specific performance.

NOTE: Since Ron kept his customer lists in a safe and on a secure file, the court will likely find that the lists were confidential and, therefore, trade secrets notwithstanding the fact that Hope was able to memorize them.

2/02 Exam MO Essay Examination Question 4 - Example 2

#1

Ron may pursue several equitable remedies against Hope with varying success.

First, Ron may request injunctive relief to prevent Hope from competing with him according to the terms of the non-competition clause in Hope's employment contract. Such clauses are generally enforceable if a) damages are difficult to ascertain; b) substantial irreparable harm could result to Ron; and c) it is not unconscionable as to geographical and temporal scope.

Ron may not succeed here. Most courts will not enforce a covenant not to compete for a term greater than 2 years. This covenant is for 5 years. Furthermore, it is unclear whether this geographic scope is too broad. \$1000 in annual sales is not very much, so Ron could easily keep Hope from competing in any state. Finally, if Ron's bookkeeper can tell Ron how much money Hope's competition is costing him, Ron may have an adequate remedy at law.

Second, Ron may seek injunctive relief to prevent Hope from using his trade secrets and confidential business information. While Ron did not have Hope sign a confidentiality agreement and did not patent his hair formula, Ron has a common law right to the confidentiality of those trade secrets if he make reasonable efforts to keep them secret. Here, Ron keeps his formula and customer lists locked away, so Ron probably has such a right. He may not completely succeed however because Hope discovered the ingredients to his hair formula in the same manner that any other competitor could have, through independent testing.

Third, Ron may seek injunctive relief to prevent Hope from using the name "Canned Rug." While it is not exactly the same as "Canned Coiffure," if the name is readily recognized in a market and the competing name is sufficiently similar to cause confusion about the two products, Ron may be able to enforce his common law right to the trade name. Again, he will have to show that there is no adequate remedy at law. Finally, Ron may be able to assert a constructive trust or an equitable lien on any proceeds that Hope has received from her business.

#2

Hope may be able to assert a few defenses. With regard to the non-competition agreement, Hope can assert that Ron can be adequately compensated through an action at law because his damages are readily ascertainable. Hope may also assert that the covenant is not reasonable as to time or geographic region. Ron must show that the time and geographic region are reasonably necessary to protect his interest. Most courts do not enforce such agreements for greater than 2 years and the scope is relatively broad. In Missouri, however, the court has the authority to "blue pencil" the clause and modify it to a reasonable scope and enforce it as rewritten.

Hope may also argue that Ron is estopped from enforcing the clause because he promised her that he would never enforce it and she relied on that assurance (whether reasonable or not) when she entered the contract. Finally, Hope may argue that the clause is not enforceable because Ron breached the employment contract by failing to pay her bonuses as required. This outcome will depend on whether the court determines the covenant not to compete to be a dependent or independent clause in the contract. If it is independent, then a breach by Ron does not excuse her non-performance. Hope may defend her use of trade secrets by showing that they were readily ascertainable by the general public. This may work as to the formula of the hair spray, but not as to the customer list. Even though Hope obtained the customer list by photographic memory, she only had access to it because of her employment.

Hope will want to argue that the trade names are dissimilar so as not to cause substantial confusion as to the identity of the products.

Hope will also argue that the hair formula she uses utilizes different chemicals. This will be a fact determination to see if those chemicals cause the products to be substantially similar or different.

2/02 Exam MO Essay Examination Question 4 - Example 3

#1

For a court of equity to grant relief, the court must find that damages at law would provide an inadequate relief to the claimant, the relief must be feasible, the court will do a balancing test to ensure that the harm to the defendant will not greatly outweigh the benefit to the plaintiff and decisions by cts. of equity are always discretionary.

In this case, Ron's damages due to lost profits brought on by Hope's competing business are undeterminable and would be speculative. Also, Ron would be subjected to multiple continuous suits brought on by Hope continuing to sell her product, causing Ron more damages and continuing breaches. Thus damages would be inadequate remedy.

It must also be feasible for a court of equity to grant relief. Thus, the ct. must have jurisdiction over the person who's conduct will be charged. In this case, the court must have juris. over Hope.

Ron should seek an injunction from the ct. of equity to prohibit Hope from selling her version of the aerosol spray. Ron would claim Hope wrongfully obtained his 'trade secret.' A trade secret consists of a secret (such as a formula) that gives one a competitive advantage in business and is not otherwise available. This is a tort where a ct. of eq. may grant an injunction. In this case, Ron's formula is a secret that he keeps locked in a safe, also indicating it is not readily available to others. It has given him a comp. adv. in that orders are rolling in.

Also, generally, others are free to imitate products when they are not patented unless it will mislead or confuse the public or info. on which to imitate was obtained wrongfully. By having a lab dissect the ingredients of Ron's spray, Hope may have violated and the ct. may grant an injunction.

While customer lists are generally not considered trade secrets, they may be considered if they are significantly diff. than the average list. Ron has compiled a list of repeat, loyal customers, he keeps the only list locked in a secure file and prohibits copies. Ron's customers are the type that belong to a select, specific, limited, specialized market. Therefore, Hope's contacting of Ron's customers violates a fiduciary duty that she owed Ron, thus a ct. may grant an injunction prohibiting her from contacting them.

It is not clear whether ct. would grant an inj. regarding the formula since Hope did change the chemicals. However, Ron does have a property right in his formula and it was obtained wrongfully.

Ron may ask the court for specific performance regarding the employment contract with Hope.

Specific perf. requires a valid contract, in which all conditions have been met and there is mutuality of remedies. A valid K req's. identity of parties, consideration, written and signed. These are present in the case and all conditions are met and no mutuality problems exist.

A ct. of eq. may grant specific perf. regarding a contract not to compete if the restriction is sufficiently limited to that which is necessary to protect the employer and it is limited to

geographic area and duration. MO will Blue pencil in a contract to make it reasonable if its not patently unreasonable. In this case the contract may be unreasonable in that Hope can't work in any area of male vanity business, and that it is for five years. Also any state w/\$1000 in sales seems unreas. since such a minimal amt. Cts. generally prefer the contracts only last for 1-2 yrs. So, if MO would Blue pencil this in to make it reas., the ct. may grant specif. perf. enabling Hope to sell her product in those state, otherwise its unreasonable and won't be enforced.

#2

Hope could claim eq. estoppel. Eq. Estoppel is where a plaintiff makes a communication on which the def. detrimentally relied and by allowing P to assert her claimed rt. would be unjust to the defendant. Ron communicated to Hope that he wouldn't enforce the K and therefore, relying on this she reluctantly relied. In now allowing Ron to assert this right would hurt Hope.

Hope could also seek a Recission. Recission reqs. that the original contract was void. Hope could rely on a unilateral mistake on her part, that she didn't know he would rely on it - he fraudulently misrepresented this.

Hope could rely on a misstatement/mistake of fact by Ron that he wouldn't enforce when he knew he would.

She could also claim that she entered into the contract under duress or coercion since her job was contingent on her signing and Ron repeatedly assured her it wouldn't be enforced.